

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1439 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DHULABHAI MITHABHAI VANKAR

Versus

STATE OF GUJARAT

Appearance:

MR SR SHAH for Petitioner
MR MA BUKHARI, AGP, for Respondent No. 1, 3
MR AB MUNSHI for MR AJ PATEL for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/08/2000

ORAL JUDGEMENT

1. Challenge has been made by the petitioner by this
petition under Article 227 of the Constitution of India
to the order of the Additional Chief Secretary (Appeals),
Revenue Department, Government of Gujarat, Ahmedabad

dated 22-1-1990 under which the revision preferred by the Gram Panchayat, respondent No.2 herein has been allowed and the order of the Collector, Kheda dated 18th June, 1989 has been quashed and set aside. Under the order dated 18th June, 1989, the land in dispute has been allotted to the petitioner for agricultural purpose. This land has been allotted to the petitioner as he being the scheduled caste. The Additional Chief Secretary (Appeals), Revenue Department, Government of Gujarat under the impugned order set aside the order of the Collector on the ground that the disputed land is a pond land and land of pond is for the public purpose. The pond is playing important role in the economy of any village. The water of rain is stored at a low place and hence the water level in the surface of earth is maintained. The village people can have facility of getting water. So what it is taken to be that grant of disputed land to the petitioner is not in the public interest.

2. Shri Munshi, learned counsel for the respondent No.2 has referred to the documents filed by the petitioner i.e. the revenue record wherefrom I find that this land in dispute is recorded as a "kharaba pond".

3. Learned counsel for the petitioner raised three contentions in this matter. Firstly, it is contended that the Gram Sabha has passed the resolution for allotment of this land to the petitioner and as such the Sarpanch has no locus standi to challenge the same. In his submission, the Gram Sabha is the final authority and this resolution of the Gram Sabha cannot be subject matter of challenge by the Sarpanch. When it is pointed out to the counsel for the petitioner that from the order impugned in this special civil application, it transpires that the appeal has been filed by the Gram Panchayat, the counsel for the petitioner contended that the Gram Panchayat has also no locus standi to challenge this decision of the Gram Sabha. Second contention has been raised that the Collector has exercised the delegated powers of the State Government, the State Government has no jurisdiction to sit over its own decision in appeal. Lastly, it is contended that since 1980, the petitioner is in possession of the land in dispute. He has made improvement in the land. He has grown as many as 360 trees in the disputed land. The petitioner is a scheduled caste and at this stage, if he is ousted from the land, he will be put to manifold difficulties and hardships.

4. Shri Bukhari, AGP, learned counsel for the

respondents No.1 and 3 supported the orders impugned in this special civil application.

5. Shri Munshi contended that the decision of the Gram Sabha taken in favour of the petitioner was a politically motivated. Secondly, as this decision was against the public interest, the Gram Panchayat has rightly challenged the same before the appellate authority and to which no exception can be made.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. Any decision given by the authority which is against the public interest, the Court in such matters may be slow to interfere. Even if what the counsel for the petitioner contended is taken to be correct for the time being still when the allotment of land made in favour of the petitioner by the Collector under the order dated 18th June, 1989 is apparently against the public interest, this court cannot grant any relief to the petitioner otherwise what it will do to perpetuate illegality and that too to the extent where maintaining thereof may result serious inconvenience to people at large of the village. Ponds play very important role in the villages and the water is used for drinking or for other purposes as well as it is equally important for cattles. These also play important role in economy of the village as well as to maintain water level in the surface of earth. After going through the order of the Additional Chief Secretary, I am satisfied that it is perfectly a legal and justified order having an approach where public interest has to be protected and on these technical grounds no interference can be made otherwise it will be detrimental to public interest. Reference here may have to the decision of the Apex Court in the case of Air India Ltd. vs. Cochin International Airport Ltd. reported in JT 2000 (1) SC 481. Para-7 of the aforesaid judgment reads as under:

7. The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in R.D. Shetty vs. International Airport Authority (1979 (3) SCC 488), Fertilizer Corporation Kamgar Union v. Union of India [(1981) 1 SCC 568] Astt. Collector, Central Excise v. Dunlop India Ltd. [(1985) 1 SCC 260], Tata Cellular v. Union of India JT 1994 (4) SC 532 = [(1994) 6 SCC 651], Ramniklal N. Bhutta v.

State of Maharashtra JT 1996 (10) SC 452 = [(1997) 1 SCC 134] and Raunaq International Ltd. v. I.V.R. Construction Ltd. JT 1998 (8) SC 411 = [(1999) 1 SCC 492]. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are of paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bonafide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its Corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by malafides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene.

8. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. In the facts of this case, no order as to costs.

zgs/-